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No. 88-1490

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LOCAL LODGE D111 OF THE CEMENT, LIME, GYPSUM AND ALLIED WORKERS, DIVISION OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO; RONNIE BRANT, Individually and as President of LOCAL LODGE D111; MARSHA PINKNEY, Individually and as Recording Secretary of LOCAL LODGE D111; and FREDDIE STEPHENS, Individually and as Financial Secretary of Local Lodge D111

and

INDEPENDENT WORKERS OF NORTH AMERICA

Petitioners and Intervenor,

v.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIP BUILDERS, BLACKSMITHS, FORGERS AND HELPERS, AFL-CIO

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court review by writ of certiorari a decision by the lower court that the terms of a contract between two (2) labor organizations are not ambiguous?

PARTIES TO THE PROCEEDING

Although Petitioners do not separately list the parties, the cover of the Petition for Writ of Certiorari lists the Independent Workers of North America (hereinafter IWNA) as an Intervenor. The IWNA did not intervene at any stage of the proceedings either before the Circuit Court of Appeals or the District Court.

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STATUTORY PROVISIONS

In addition to the statutory provisions set forth in the Petition for Writ of Certiorari, this case involves the following statutory provisions.

29 U.S.C. § 185:

§ 185. Suits by and against labor organizations

(a) Venue, amount, and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Responsibility for acts of agent — Entity for purposes of suit — Enforcement of money judgments. Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) Jurisdiction. For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district court in which its duly authorized

officers or agents are engaged in representing or acting for employee members.

(d) Service of process. The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) Determination of question of agency. For the purposes of this section, in determining whether any person is acting as an 'agent' of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

Prior to April 1, 1984, the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers (hereinafter IBB) and the United Cement, Lime, Gypsum and Allied Workers International Union (hereinafter CWI) were two (2) separate international labor organizations. Effective April 1, 1984 these two (2) international unions merged; with the CWI becoming a division of the IBB.

Prior to April 1, 1984, the CWI and its affiliated Local Union 111 represented the employees of Gold Bond Building Products in Savannah, Georgia. As a result of the merger of the two (2) international unions, Local Union 111 became affiliated with the Cement Division of the IBB and was redesignated Local Lodge D111, but otherwise was unchanged. As an affiliate of the IBB, Local Lodge D111 was contractually bound to the provisions of the constitution of the IBB.

During the international convention of the IBB in August of 1986, a political squabble developed among certain candidates for IBB offices and their supporters.[1/] As with all political squabbles, one side lost. The losers of this political squabble then decided to form their own international labor organization calling it the Independent Workers of North America (hereinafter IWNA).

The IWNA proceeded to raid local lodges of the IBB. The vast majority of the members of the IWNA are former members of the IBB. Nevertheless, a majority of the former CWI locals remain with the IBB, and the Cement Division continues as a viable functioning appendage of the IBB.

The IWNA sought to represent the members of IBB Local Lodge D111 by filing a representation petition with the National Labor Relations Board (hereinafter NLRB). An NLRB election

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[1/] For a more thorough explanation of this political battle, see, *Georgia Kaolin*, 287 N.L.R.B. No. 50 (1987).

was held and the IWNA was certified on January 16, 1987 as the collective bargaining representative of the employees of Gold Bond.

As a result of this NLRB election, there were less than ten (10) active members in IBB Local Lodge D111. Pursuant to certain contractual provisions in the IBB constitution, set forth more fully *infra*, the IBB revoked the charter of Local Lodge D111 and demanded the return of all assets to the IBB.[2/]

Local Lodge D111 and its officers refused to comply with this demand and suit was filed with the Superior Court of Chatham County Georgia by the IBB to enforce its contractual rights. That cause of action was properly removed by Defendants, pursuant to 28 U.S.C. § 1441 and 29 U.S.C. § 185, to the United States District Court for the Southern District of Georgia.

The IBB filed a Motion for Summary Judgment along with

[2/] It is interesting to note that the constitution of the former CWI contained a virtually identical provision, which stated:

Article 15

Section 7 — Disbanding of Local Unions

So long as at least seven (7) members thereof remain in good standing and retain employee status in a bargaining unit which constitutes the sole jurisdiction of the local union, a local union cannot be disbanded nor can such local union vote or otherwise decide to disband. Under no other circumstances may a local union be disbanded or dissolved without prior written consent of the International President. In the event a mill, plant or quarry, which constitutes the sole jurisdiction of a local union, is abandoned, the International President, with the consent of the International Executive Board may revoke the charter of said local union. All funds and other assets of a local union shall be the specific property of the local union, subject to all applicable provisions of the International Constitution and Bylaws, and under no conditions may local union funds and other assets be dissipated or allotted or divided among the members thereof, or turned over to any other organization or person.

(continued next page)

accompanying Memorandum, Statement of Facts, and Affidavits. The Statement of Facts and Affidavits were never controverted by Defendants, in fact, Defendants stipulated to most of these facts.

Defendants opposed Plaintiffs' Motion for Summary Judgment on the sole ground that certain provisions of the merger agreement between the IBB and the CWI conflicted with the surrender provisions of the IBB constitution. Defendants maintained that what has been referred to as the "retain clause" of the merger agreement allowed the IWNA to keep the assets of IBB Local Lodge D111. Both the District Court and the Circuit Court determined that the contractual language in question was not ambiguous as a matter of law and that the IBB was contractually entitled to the assets of former IBB Local Lodge D111.

Section 8 — International Union Control Over Local Union Property

In cases of suspension revocation of the charter, expulsion, lapsing, or disbanding of any local union for any cause or reason whatsoever, all the funds, property and assets of the local union shall forthwith revert to and become the property and assets of the International union. The International Secretary-Treasurer may authorize, in writing, a member of a nearby local union or another representative to take charge of and to remit to the International Union, all of the said funds, property and assets of the said local union. All such funds, property and assets of the said local union shall be held by the International Secretary-Treasurer, or his designated representative, and shall be held for a period of at least six months, during which said funds, property and assets may be used solely for the purpose of meeting the existing obligations of the said local union. If, within the period of time during which said funds, property and assets are held for the purpose of making said payments, application is made therefor by at least fifteen (15) members in good standing with the International Union in that locality, such local union shall be reestablished and the funds, property and assets shall belong to and become the property of the International Union to be commingled with the other property of the International Union.

REASONS WHY THE WRIT FOR CERTIORARI SHOULD NOT BE GRANTED

I. Certiorari Should Not Be Granted Because The Decision Below Does Not Create A Conflict Among The Circuits.

The decision in the present case by the Eleventh Circuit is not in conflict with the decision of the Seventh Circuit in *International Brotherhood of Boilermakers v. Local Lodge 714*, 845 F.2d 687 (7th Cir. 1988). In *International Brotherhood of Boilermakers v. Local Lodge 714* the IBB sought to enforce the trusteeship provisions of the IBB constitution. The IBB argued that local lodge 714 and it officers had violated the IBB constitution and that the IBB was entitled to injunctive relief to enforce the trusteeship placed on local lodge 714. The Seventh Circuit determined that if there were no longer ten (10) active members in local lodge 714 that the local lodge was automatically disbanded, and thus, there was no local lodge for the IBB to trustee. The Seventh Circuit also stated:

> The international's constitution may forbid disaffiliation, as we have seen. If so, then even if the prohibition is not enforceable by means of the trusteeship, because the prohibition of secession as such may not be a legitimate objective under section 302, it may still be enforceable as a matter of contract law.
>
> * * *
>
> The international union may appear to have a clear right to the return of its books and money, but that is not correct, because if the trusteeship is valid the trustee has the right to the books and money, while if the trusteeship is invalid the books and money presumably should be turned over to the international.
>
> * * *
>
> [P]rovided Local Lodge 714 did not disband before the trusteeship was voted and by disbanding perhaps place

> itself beyond the power of the international to impose a trusteeship; on these questions a remand is necessary.

845 F.2d at 695. Thus, the Seventh Circuit left open two (2) questions: (1) Did Local Lodge 714 fall below ten (10) members and thus automatically disband, and (2) Does the IBB constitution prohibit a local lodge from "disaffiliating"?

In the present case the IBB sought enforcement of the contractual surrender clause set forth in the IBB constitution, referred to by the Seventh Circuit in *International Brotherhood of Boilermakers v. Local Lodge 714*, 845 F.2d 687.[3/] The IBB argued that the membership in Local Lodge D111 fell below ten (10) members as the result of an NLRB election. The IBB further argued that the IBB constitution contractually obligated Local Lodge D111 to surrender all books, records, property,

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[3/] The constitution of the IBB provides in relevant part:

Upon issuance of such Charter, such Local Lodge shall, subject to other applicable provisions of this Constitution and particularly Sections 3 and 4 of this Article, continue in existence while ten (10) or more of its members are employed under the jurisdiction of the International Brotherhood, subject to the approval of the Executive Council. If ten (10) or more members maintain membership in such Local Lodge and otherwise comply with the provisions of this Constitution, all books, records, properties, funds and assets (including trusts, trust funds or other trust properties held, operated or controlled by such Local Lodge) owned or held by such Local Lodge shall remain the property of such Local Lodge so long as the Charter is maintained.

Any Local Lodge having less than ten (10) active members shall be automatically disbanded and its Charter returned to the International Brotherhood, together with all books, records, properties, funds and assets (including trusts, trust funds or other trust properties held, operated or controlled by such Local Lodge) owned or held by such Local Lodge at the time of such disbanding, which shall become the property of the International Brotherhood. (Article V, Section 6).

(continued next page)

funds and assets of the local; the local having been disbanded pursuant to the IBB constitution. Citing the Seventh Circuit decision in *International Brotherhood of Boilermakers v. Local 714*, 845 F.2d 687, as support, the Eleventh Circuit found this contractual surrender clause enforceable. *International Brotherhood of Boilermakers v. Local Lodge D111*, 681 F. Supp. 1570, *aff'd.*, 858 F.2d 1559 (11th Cir. 1988).

Likewise, in *International Brotherhood of Boilermakers* v. D504, ____F.2d____, 130 L.R.R.M. (BNA) 2528 (3rd Cir. 1989), the IBB sought enforcement of this very same surrender clause. Citing, *International Brotherhood of Boilermakers v. Local Lodge D111*, 858 F.2d 1559, the Third Circuit also found this surrender clause enforceable. It is interesting to note that in *International Brotherhood of Boilermakers v. Local Lodge D522*, 815 F.2d 912, 917, n.8 (3rd Cir. 1987), the Meranze and Katz firm advocated enforcement of the very same provisions.

The funds and property of a subordinate body are trust funds for the benefit of its members and shall not be divided in any manner among the members of the subordinate body. Upon the surrender, forfeiture or revocation of its charter other than through consolidation, all funds belonging to each subordinate body shall be forwarded promptly to the International Secretary-Treasurer and all real estate and other property owned or held by such body shall be immediately transferred and conveyed by the proper legal instrument to the International Board of Trustees of the International Brotherhood. The International Brotherhood through its Board of Trustees shall be authorized to sell and liquidate such real estate and other property and the proceeds arising therefrom, after the payment of expenses incurred, shall be deposited with the other funds so forwarded to the International Secretary-Treasurer. All such funds shall revert to the General Fund of the International Brotherhood with proper record of the transfer maintained by the International Secretary-Treasurer. In the event such subordinate body should ever be rechartered at that location, the Executive Council is authorized to give approval to the transfer of an amount not to exceed fifty per cent (50%) of such funds from the General Fund to the credit of the rechartered subordinate body. (Article XXXVI, Section 2).

Neither the Eleventh Circuit nor the Third Circuit, addressed the issue before the Seventh Circuit — the enforceability of a trusteeship. All three (3) circuits are in accord on the only common issue — the enforceability of the surrender clauses contained in the IBB's constitution.

Apparently, Petitioners hinge their argument that there is a conflict among the circuits on certain language in *International Brotherhood of Boilermakers v. Local Lodge 714*, 845 F.2d 687. The Seventh Circuit stated:

> [t]he international's constitution is ambiguous on the right to disaffiliate. It contains no provision authorizing disaffiliation and contains a provision making 'secession or threaten secession' a ground for imposing a trusteeship, which could be taken either as an implied prohibition of disaffiliation or as recognition that disaffiliation will sometimes occur and authorization to do something about it.
>
> * * *
>
> Maybe Local Lodge 714 could not disaffiliate but if so many of its members quit that fewer than ten remained the lodge was automatically disbanded and its property reverted to the international.

845 F.2d at 692. The Seventh Circuit went on to conclude that because of the state of the record it could not make a determination as to whether or not the IBB constitution prohibited disaffiliation.

In the case *sub judice*, the Eleventh Circuit did not squarely rule on whether or not the IBB constitution prohibited disaffiliation of a local lodge. Here, the Eleventh Circuit found that Local Lodge D111 fell below ten (10) members and was disbanded as the result of an NLRB election. 858 F.2d 1564. The Eleventh Circuit went on to find the Local Lodge was contractually obligated to go on making per capita tax payments to the IBB until there were less than ten (10) members. 858 F.2d at 1568, *citing with favor, International Brotherhood of*

Boilermakers v. Local Lodge D296, 687 F. Supp. 469 (D. Ariz. 1988).

In *International Brotherhood of Boilermakers v. Local Lodge D238*, 678 F. Supp. 1575 (M.D. Ga. 1988), *aff'd.*, 865 F.2d 1228 (11th Cir. 1989), the Eleventh Circuit more squarely addressed one of the questions left unresolved by the Seventh Circuit in *International Brotherhood of Boilermakers v. Local Lodge 714* — whether or not a disaffiliation vote will result in the local lodge having less than ten (10) members. Citing, *International Brotherhood of Boilermakers v. Local Lodge 714*, with apparent favor, the Eleventh Circuit found that the locals in question had not disbanded by taking an internal disaffiliation vote, and that there were in fact more than ten (10) members. There, the Court found:

> the International Union presented evidence that the Local Lodges did not disband, and the Local Lodges failed to provide any evidence or testimony that their memberships fell below ten members.

865 F.2d 1235.

The Third Circuit in *International Brotherhood of Boilermakers v. Local Lodge D504* squarely addressed one of the other questions unresolved in *International Brotherhood of Boilermakers v. Local Lodge 714* — whether or not the IBB constitution prohibits disaffiliation. Based on a complete record, the Third Circuit was able to determine the IBB constitution did in fact prohibit disaffiliation. 130 L.R.R.M. (BNA) 2528, 2530, n.8. The Court went on to conclude:

> [t]he Boilermakers, even after the Locals' internal disaffiliation votes, remained the bargaining agent for the Locals until the National Labor Relations Board decertification.
>
> * * *
>
> Moreover, the Boilermakers provided support services to the Local Lodges until decertification. We hold that the

> per capita tax is due from the Local Lodges for each member until the date of decertification provided the member remained employed and remained a member of the Local Lodge.

130 L.R.R.M. 2532-33, *citing with favor, International Brotherhood of Boilermakers v. Local Lodge D31*, 694 F. Supp. 1203 (D. Md. 1988); and *International Brotherhood of Boilermakers v. Local Lodge D405*, 699 F. Supp. 749 (D. Ariz. 1988).

Petitioners also argue that the Eleventh Circuit's decision somehow conflicts with the Supreme Court's recent decision in *Trans World Airlines, Inc. v. Independent Federation of Flight Attendants*, 57 U.S.L.W. 4283 (1989). *TWA v. Independent Federation of Flight Attendants*, stands for the proposition that an employer covered by the Railway Labor Act can hire permanent replacements for economic strikers, absent union animus, similar to an employer covered by the National Labor Relations Act. This decision has no bearing on the case *sub judice*.

II. Certiorari Should Not Be Granted Because The Decision Below Is Based Upon The Distinctive Contractual Arrangement Between The Parties.

The question presented to the Eleventh Circuit was very simple — whether or not the constitution of the IBB is consistent with the merger agreement and requires surrender of Local Lodge D111's assets to the IBB. The Eleventh Circuit found as a matter of law the contract language in question was not ambiguous. The Eleventh Circuit went on to find that the contract language unambiguously required surrender of Local Lodge D111's assets to the IBB. Such a factual based determination, particular to the parties, does not warrant review on a petition for certiorari. *Goodman v. Lukens Steel Company*, 482 U.S. 656, 107 S. Ct. 2617, 96 L. Ed.2d 572 (1987).

Petitioners apparently seek review on a number of more esoteric grounds, raised for the first time in their Petition for Writ of Certiorari. It would not be appropriate to grant certiorari on these issues not raised at the district court or circuit court level. *Springfield v. Kibbe*, 480 U.S. 257, 107 S. Ct. 1114, 94 L. Ed.2d 293 (1987); *Mishkin v. New York*, 383 U.S. 502, 86 S. Ct. 958, 16 L. Ed.2d 56 (1966). Nor are the record facts such as to warrant review of the issues now argued by Petitioners in their Petition for Writ of Certiorari. *Gilbert v. California*, 388 U.S. 263, 87 S. Ct. 1951, 18 L. Ed.2d 1178 (1967).

Petitioners raise for the first time in their Petition for Writ of Certiorari that the Eleventh Circuit's decision somehow interferes with the power of employees to select their own collective bargaining representative. Apparently, Petitioners rely on their factual assertion that "members of Local 111 engaged in valid and lawful disaffiliation proceedings designed individually and collectively to resign their memberships in the IBB." There was absolutely no record evidence before the court below to support such an argument. Moreover, Petitioners did not argue before the court below that enforcing the IBB constitution would somehow interfere with federal labor policy embodied in 29 U.S.C. § 157.

Petitioners raise for the first time in their Petition for Writ of Certiorari the argument that the Labor Management Reporting Disclosure Act does not permit a finding of entitlement to assets. Petitioners did not raise any argument before the court below that enforcement of the IBB constitution would somehow interfere with federal labor policy embodied in 29 U.S.C. § 401 or 29 U.S.C. § 501.

III. Certiorari Should Not Be Granted Because The Decision Below Comports With Federal Labor Policy.

The IBB constitution unambiguously requires Local Lodge D111 to surrender all books, properties, records, funds and

assets to the IBB. *International Brotherhood of Boilermakers v. Local Lodge 714*, 845 F.2d 687; *International Brotherhood of Boilermakers v. Local Lodge D504*, 130 L.R.R.M. (BNA) 2528; *International Brotherhood of Boilermakers v. Local Lodge D238*, 865 F.2d 1228; *International Brotherhood of Boilermakers v. Local Lodge D461*, 663 F. Supp. 1031 (M.D. Ga. 1987), *aff'd*, 835 F.2d 1439 (11th Cir. 1987); *International Brotherhood of Boilermakers v. Local Lodge D474*, 673 F. Supp. 199 (W.D. Tex. 1987); *International Brotherhood of Boilermakers v. Local Lodge D296*, 687 F. Supp. 469; and *International Brotherhood of Boilermakers v. Local Lodge D405*, 699 F. Supp. 749. The Eleventh Circuit specifically concluded that this unambiguous language required Local Lodge D111 to surrender all books, properties, funds and assets to the IBB. *International Brotherhood of Boilermakers v. Local Lodge D111*, 858 F.2d 1562-63.

A. Federal Labor Policy Favors Enforcement Of The IBB Constitution.

The surrender language set forth in the IBB constitution is not unusual, and is in fact, standard language for international unions.[4/] Local Lodge D111 contracted with the IBB when it became a chartered local of the IBB. The constitution of the IBB sets forth the terms of that contractual relationship, by which D111 agreed to abide. One of the terms of that contractual

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[4/] See, e.g. *BRAC v. Orr*, 95 L.R.R.M. (BNA) 2701 (E.D. Tenn. 1977); *Local 1 v. International Brotherhood of Teamsters*, 461 F. Supp. 961 (E.D. Penn. 1978), *aff'd in part*, 614 F.2d 846 (3rd Cir. 1980); *Michigan Teamsters Joint Council v. Bufalino*, 626 F. Supp. 51 (E.D. Mich. 1985); *International Brotherhood of Teamsters v. United States*, 275 F.2d 610 (4th Cir. 1960), *cert. denied*, 362 U.S. 975; *Grain Millers Local v. Grain Millers International*, 59 L.R.R.M. (BNA) 3025 (Neb. D.C. 1965); *International Union v. Local 450*, 271 Minn. 181, 135 N.W.2d 697, 59 L.R.R.M. (BNA) 2288 (Minn. 1965); *Pizer v. Brown*, 133 Cal. App. 2d 367, 283 P.2d 1055, 36 L.R.R.M. (BNA) 2341 (Cal. Dist. Ct. App. 1955), *cert. denied*, 351 U.S. 982; *Fisher v. Behr*, 30 L.R.R.M. (BNA) 2116 (N.Y. Sup. Ct. 1952).

relation was that Local Lodge D111 is required to surrender all books, property, funds and assets to the IBB if it discontinues that contractual relation. Local Lodge D111 enjoyed the benefits of that bargain for over two (2) years and then refused to meet its obligations when it wished to end the contractual relation.

There is a specific grant of federal court jurisdiction for unions to enforce such contractual relations. 29 U.S.C. § 185; *Plumbers and Pipefitters v. Local 334*, 452 U.S. 615, 101 S. Ct. 2546, 69 L. Ed.2d 280 (1981). Moreover, Congress has specifically recognized the right of labor organizations to govern their own internal affairs, unless there is a direct conflict with federal labor policy. *Plumbers v. Local 334*, 452 U.S. 625-26. Concomitantly, a union's interpretation of the requirements of its own constitution will be respected by the Court and not overturned unless patently unreasonable. *International Brotherhood of Boilermakers v. Hardeman*, 401 U.S. 233, 242-43, 91 S. Ct. 609, 28 L. Ed.2d 10 (1971).

The IBB has interpreted its constitution to require a local lodge that is disbanded, to surrender all books, property, funds and assets to the IBB. That interpretation of the IBB constitution has been consistently applied since the incorporation of these provisions into the IBB constitution and has continued since the merger between the CWI and the IBB. That interpretation of the IBB constitution is not patently unreasonable and, accordingly, is due proper deference by the Court.

Federal labor policy considerations favor enforcement of such a provision.[5/] The most fundamental of Congressional labor goals is the preservation of industrial stability. *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 77 S. Ct. 912, 1 L. Ed.2d 972

[5/] Contrary to Petitioners' assertion, the vast majority of the courts that have addressed this issue have found similar provisions, to serve valid purposes consistent with federal labor policy, and thus, enforceable. See, generally, *Harker v. McKissock*, 7 N.J. 323, 81 A.2d 480, 28 L.R.R.M. (BNA) 2204 (N.J. 1951); *Walter Kidde v. United Electrical Radio &*

(continued next page)

(1957); *United Steelworkers v. Warrior & Gulf Navigation Company*, 363 U.S. 574, 80 S. Ct. 1347, 4 L. Ed.2d 1409 (1960). Industrial stability is promoted through collective bargaining between employers and unions, which is in turn part of the federal labor policy. 29 U.S.C. § 151; *McVicker v. International Union of District 50 Allied and Technical Workers*,

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Machine Workers, 7 N.J. 528, 82 A.2d 184, 28 L.R.R.M. (BNA) 2241 (N.J. 1951); *Bowman v. Moe*, 66 Wash. 2d 629, 404 P.2d 437, 60 L.R.R.M. (BNA) 2284 (Wash. 1965); *Bradley v. O'Hare*, 202 N.Y.S.2d 141, 46 L.R.R.M. (BNA) 2672 (N.Y. Sup. Ct. 1960); *NEA v. Dade County Class Room Teachers Association*, 407 F. Supp. 739 (S.D. Fla. 1974), *aff'd.*, 527 F.2d 1388 (5th Cir. 1976), *cert. denied*, 429 U.S. 827; *McVicker v. International Union of District 50*, 327 F. Supp. 296 (N.D. Ohio 1971); *Sawyers v. Grand Lodge, International Association of Machinists*, 279 F. Supp. 747 (E.D. Mo. 1967).

Some Courts have, nevertheless, created a limited exception to this rule where labor organizations have been substantially infiltrated by organized crime or communist influences, resulting in a schism in the international union. See, e.g. *Bradley v. O'Hare*, 202 N.Y.S.2d 141. However, the National Labor Relations Board itself has already ruled no such disruption exists in the International Brotherhood of Boilermakers. See, *Georgia Kaolin, Inc.*, 287 N.L.R.B. No. 50 (1987), *cited with favor, International Brotherhood of Boilermakers v. Local Lodge D238*, 681 F. Supp. 1570 (M.D. Ga. 1988), *aff'd*, 865 F.2d 1228 (11th Cir. 1989).

The cases cited by Petitioners do not lend support to their argument. The question of proper ownership of the assets pursuant to contractual obligations of the local is not addressed in *NLRB v. Hershey's Chocolate Corporation*, 297 F.2d 286 (3rd Cir. 1961). The decisions of the NLRB in *Prudential Insurance Company*, 106 N.L.R.B. 237 (1953) and *Louisville Railroad*, 90 N.L.R.B. 678 (1950), deal with whether or not the NLRB should hold a representation election. *Alvino v. Carraccio*, 400 Pa. 477, 162 A.2d 358, 46 L.R.R.M. (BNA) 2541 (Pa. 1960), is another case carving out a limited exception where there is widespread corruption at the international union. Finally, *Wells v. Waukesha County Marine Bank*, 135 Wis. 2d 519, 401 N.W.2d 18, 124 L.R.R.M. (BNA) 2735 (Wis. Ct. App. 1986), is founded on a state court's interpretation of a state statute. Morever, the reasoning of *Wells v. Waukesha*, interpreting federal law, is faulty and principles of voluntary unionism alluded to in that case are much narrower than the court perceived.

327 F. Supp. 296. The destruction of labor unions impairs the collective bargaining process and should be avoided if possible. *Electrical Workers v. Foust*, 442 U.S. 42, 99 S. Ct. 2121, 60 L. Ed.2d 698 (1979); *Vaca v. Sipes*, 386 U.S. 171, 87 S. Ct. 903, 17 L. Ed.2d 842 (1967).

If local labor unions are allowed to take the benefits of affiliation with international unions, without being bound by the international's constitution, international unions will be unable to protect the limited funds that they can accumulate. International unions could spend large amounts of money organizing and representing employees at a particular location, in the expectation that those employees will become valuable members of the international union as a whole. Allowing local unions to withdraw after they receive these services, despite their contractual obligations, defeats the very purpose of an international labor union — collective action to increase economic power. Enforcement of a constitutional provision that requires the local to surrender its assets upon disaffiliation encourages participation by the local union in the international union. Healthy and stable international unions in turn promote the national labor policy of collective bargaining and industrial stability.

The Eleventh Circuit recognized that this policy consideration favored enforcement of the IBB constitution. *International Brotherhood of Boilermakers v. Local Lodge D238*, 865 F.2d 1237. As the Seventh Circuit stated:

> [a]n organization might conceivably lack minimum stability if each of its cells were free to depart at a drop of a hat, and if so, it would not comport with the procompetitive policies of Landrum-Griffin to forbid unions to take any measures at all to impede secession.

845 F.2d at 694.

Congress has also found that the preservation of ethical standards in the administration of labor organizations is an

important federal labor policy. 29 U.S.C. § 401. Thus, Congress enacted 29 U.S.C. § 501(a), which states, *inter alia*:

> It is, therefore, the duty of each person, taking into account the special problems and functions of a labor organization, to hold its money and property *solely for the benefit of the organization* and its members and to manage, invest, and expend the same *in accordance with its constitution and bylaws* and any resolutions of the governing bodies adopted thereunder, to *refrain from dealing with such organization as an adverse party or in behalf of an adverse party*.

(Emphasis added).

The IBB constitution echoes these principles and creates an enforceable contractual obligation very similar to these statutory obligations. Thus, the IBB constitution provides the funds of a subordinate body are to be used only for the subordinate body in accordance with the IBB constitution, and if the subordinate body leaves the IBB, the funds must be surrendered to the IBB. IBB constitution Article XXXVI, Section 1 and 2. Likewise, that IBB constitution provides that no member in exercising his or her rights as a member shall evade or avoid his or her responsibilities to the organization as an institution or advocate any conduct that would interfere with the organization (IBB constitution Article XXIX, Section 2), and prohibits a member from advocating conduct detrimental to the interest of the IBB or its subordinate bodies. (IBB constitution Article XVII, Section 1(e) and (1)).

Contrary to the Petitioners' position, not only do the officers of Local Lodge D111 have duties toward the membership, but they have duties toward Local D111 and the IBB as entities.[6/]

[6/] Petitioners boldly state that there is no evidence of a violation of 29 U.S.C. § 501. There was ample evidence before the Eleventh Circuit that Local Lodge funds were dissipated in violation of the IBB constitution. Moreover, there was no evidence before the Eleventh Circuit that the Local Lodge membership somehow approved of this fraud.

These officers must hold the property of the IBB for the benefit of the IBB as an entity. Congress specifically left the manner in which this was to be carried out to the internal operation of unions and their governing rules. Congress also specifically admonished union officers not to deal with the union entity as an adverse party.

As Petitioners note, the IBB constitution provides that local lodge funds are "trust funds for the benefit of its members." Yet, the Petitioners fail to note that the IBB constitution also provides "[t]he funds of any subordinate body shall be used only for the purpose of said body" and "shall not be divided in any manner among the members of the subordinate body." IBB constitution Article XXXVI, Section 1 and 2. The IBB constitution goes on to state that those assets revert to the IBB when the local lodge is no longer a subordinate body of the IBB.

Petitioners appear to advocate that local union officers can spend local union money in any fashion they please, despite contractual restrictions, as long as a majority of the membership votes in favor of the expenditure. In this instance, those members ostensibly voted to spend money in direct contravention to the rules they agreed upon and in conflict with the union entity itself. The logical extreme of this argument is that the local union officers could use local union money to finance a vacation to Bermuda as long as a majority of the membership voted in favor of the expenditure. This is the very type of abuse that 29 U.S.C. § 501 was designed to prohibit. The IBB seeks to prevent such abuses in this case by enforcing its contractual rights. By enforcing these contractual rights the Court would in turn be promoting federal labor policy as set forth in 29 U.S.C. § 501. *International Brotherhood of Boilermakers v. Local Lodge D296*, 687 F. Supp. 469; and *International Brotherhood of Boilermakers v. Local Lodge D111*, 681 F. Supp. at 1575, *aff'd.*, 858 F.2d 1559.

B. Enforcement Of The IBB Constitution Does Not Interfere With Employee Rights To Select Their Own Collective Bargaining Representative.

This Court has previously found that the relationship between a union and its members is contractual in nature, unless the contract impinges on some policy of federal labor law. *Scofield v. NLRB*, 394 U.S. 423, 89 S. Ct. 1154, 22 L. Ed.2d 385 (1969); *NLRB v. Boeing Company*, 412 U.S. 67, 93 S. Ct. 1952, 36 L. Ed.2d 752 (1973). Thus, unions remain free to promulgated and enforce rules against members who voluntarily submit themselves to such enforcement by agreeing to assume full membership, even if the rule and its enforcement might otherwise restrain or coerce the exercise of rights under 29 U.S.C. § 157; *Pattern Makers' League v. NLRB*, 473 U.S. 95, 105 S. Ct. 3064, 87 L. Ed.2d 68 (1985); *NLRB v. Allis-Chalmers*, 388 U.S. 175, 87 S. Ct. 2001, 18 L. Ed.2d 1123 (1967).

It is correct that a union member must be free to resign his membership in the union, thereby, escaping any future application of the rule to subsequent conduct. *Pattern Makers' League v. NLRB*, 473 U.S. 95. Nevertheless, *Pattern Makers' League* does not stand for the proposition that a union member who resigns may lay claim to all or a portion of the union treasury. To the contrary, it does not impinge on federal labor law to require a member to pay all contractual financial obligations upon resignation. *NLRB v. Granite State Joint Board*, 409 U.S. 213, 93 S. Ct. 385, 34 L. Ed.2d 422 (1972). Thus, the Court stated in *Granite State Joint Board*:

> We have, therefore, only to apply the law which normally is reflected in our free institutions — the right of the individual to join or resign from associations, as he sees fit 'subject of course to any financial obligations due and owing' the group which he was associated.

409 U.S. at 216.

The IBB has placed no restriction whatsoever on the right of the members of Local Lodge D111 to resign from union membership. The members of Local Lodge D111 were free to resign at any time they chose. There is no evidence present in this case to indicate any members of Local Lodge D111 resigned from union membership prior to the NLRB election.

The IBB constitution does indicate if enough members resign, so that the local lodge falls below ten (10) members, that the local lodge forfeits its charter in the IBB. The IBB constitution also states that if the local lodge loses its IBB charter for this or any other reason, that local lodge assets are surrendered to the IBB.

Congress has placed no restriction on an international union's ability to grant or revoke a local union charter. In fact, this Court has specifically recognized the right of international unions to govern their own internal affairs, unless there is a direct conflict with federal law. *NLRB v. Boeing*, 412 U.S. 67; and *Plumbers v. Local 334*, 452 U.S. 615, n. 15.

While there is a specific right for union members to resign from a union, there is no such statutory right for local unions to resign or "disaffiliate" from international unions. In fact, this Court has previously made it very clear that no federal statute regulates union decision making over matters such as affiliation. *NLRB v. Financial Institution Employees, Local 1182*, 475 U.S. 192, 106 S. Ct. 1007, 89 L. Ed.2d 151 (1986); *United Steelworkers v. Sadlowski*, 457 U.S. 102, 102 S. Ct. 2339, 72 L. Ed.2d 707 (1982).

To the extent those internal union affairs are governed by some sort of contractual relation, Congress granted jurisdiction to federal courts, under 29 U.S.C. § 185, to resolve differences concerning those contractual relations. Since there is no federal labor policy that is affected by a rule preventing local union affiliation, the courts have generally found such a rule contractually enforceable. *NEA v. Dade County Class Room Teachers Association*, 407 F. Supp. 739; *McVicker v.*

International Union of District 50, 327 F. Supp. 296; *Sawyers v. Grand Lodge International Association of Machinists*, 279 F. Supp. 747; *International Brotherhood of Boilermakers v. Local Lodge D474*, 673 F. Supp. 199; *International Brotherhood of Boilermakers v. Local Lodge D238*, 865 F.2d 1228.

Not only does enforcement of the IBB constitution not interfere with free employee selection of their collective bargaining representative, it actually promotes such free choice. The IWNA apparently pilfered the funds of Boilermakers Local Lodge D111 months before the NLRB election. Petitioners assert without resort to record evidence that this was done as the result of some sort of internal union disaffiliation vote.

There was no evidence before the court below that any vote ever took place. There was no evidence before the court below that there was adequate notice to the members of the purported vote. There was also no evidence that there was any notice to the IBB of the purported vote.[7/] There was no evidence that the purported vote authorized the misuse of Local Lodge funds. There was also no evidence before the court below that the members were offered an opportunity to freely discuss the issues and voted in a noncoercive atmosphere. In short, there was no evidence that the minimal due process requirements were observed.

If any party interfered with the selection of the collective bargaining representative it was the IWNA. By the time of the NLRB election, the employees were faced with a *fait accompli*. The employees had two (2) choices during the NLRB election: (1) vote for a IBB Local Lodge, whose treasury had been pilfered; or (2) vote for the IWNA, which was in possession of the pilfered funds. The pilferage of the IBB books, records,

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[7/] Although the IBB was generally aware that the IWNA was raiding its locals, the IBB did not become aware of the purported vote at Local Lodge D111 until Petitioners attorneys asserted a vote took place in its briefs to the court below.

property and funds can only be viewed as an interference with employee freedom of choice. *Kearney & Trecker v. NLRB*, 210 F.2d 852 (7th Cir. 1954), *cert. denied*, 348 U.S. 824.

C. The IBB Constitution Does Not Require Members To Continue Paying Per Capita Tax After Resignation.

The IBB constitution places no restriction on the right to resign from membership in Local Lodge D111. Nor does the IBB's constitution require former members to continuing paying dues after resignation.

The IBB constitution does require Local Lodge D111 to continue making per capita tax/division fund payments to the IBB, for each member that it does have. The Eleventh Circuit found that Local Lodge D111 attempted to disaffiliate in September of 1986, but that attempted disaffiliation was ineffectual. 858 F.2d 1559. See, also, *International Brotherhood of Boilermakers v. Local Lodge D238*, 865 F.2d 1418. The Eleventh Circuit went on to find that Local Lodge D111 was disbanded by the IBB in February of 1987. Thus, the Eleventh Circuit found that the contractual obligation to make per capita tax/division fund payments continued to inure until disbandment.

As the Eleventh Circuit found in *International Brotherhood of Boilermakers v. Local Lodge D111*, there was no factual dispute as to how many members D111 had or how much in per capita tax/division fund payments were due. Thus, there was no issue before the Eleventh Circuit of requiring individuals who had resigned to pay dues.

The Third Circuit expanded on this view in *International Brotherhood of Boilermakers v. Local Lodge D504*, when it held:

> that the per capita tax is due from the Local Lodges for each member until the date of decertification provided the

member remained employed and *remained a member of the Local Lodge*.

(Emphasis added). 130 L.R.R.M. (BNA) 2533.

Accordingly, Local Lodge D111 continued to have a contractual obligation to make per capita tax/division fund payments to the IBB, for each *member*, until disbandment. Since a vote to disaffiliate does not constitute resignation, Local Lodge D111 remained obligated to make payment to the IBB until disbandment.

CONCLUSION

For all foregoing reasons, Respondent respectfully requests the Court deny the Petition for Writ of Certiorari.

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